

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/DTS)

This Document Relates to:

**SHORT FORM COMPLAINT AND
JURY TRIAL DEMAND**

PLAINTIFF(S)

Douglas MacDonald and Penny MacDonald

VS.

**3M COMPANY AND ARIZANT
HEALTHCARE, INC.**

1. Plaintiffs Douglas MacDonald and Penny MacDonald, state and brings this civil action in MDL No. 15-2666, entitled *In Re: Bair Hugger Forced Air Warming Products Liability Litigation*. Plaintiff is filing this Short Form Complaint as permitted by Pretrial Order #8 of this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff, Douglas MacDonald, is a resident and citizen of the State of Missouri and claims damages as set forth below.

3. Plaintiff's Spouse, Penny MacDonald, is a resident and citizen of the State of Missouri, and claims damages as set forth below.

4. Jurisdiction is proper based upon diversity of Citizenship.

5. Proper Venue: The District Court in which remand trial is proper and where

this Complaint would have been filed absent the direct filing order by this Court is

Greene County Judicial Courts Facility, 31st Judicial Circuit, 1010 North Boonville, Springfield, MO, 65802.

6. Plaintiff brings this action *[check the applicable designation]*:

X On behalf of [himself/herself];

_____ In a representative capacity as the _____ of the
_____ having been duly appointed as the
_____ by the _____ Court of
_____.

A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

[Cross out if not applicable.]

FACTUAL
ALLEGATIONS

7. On or about May 13, 2014, Plaintiff underwent a left total knee replacement surgery during which the Bair Hugger Forced Air Warming system (hereinafter “Bair Hugger”) was used during the course and scope of [his/her] surgery at Mercy Hospital Springfield in Springfield, Missouri, by Dr. Richard Seagrave, MD.

8. Contaminants introduced into Plaintiff’s open surgical wound as a

direct and proximate result of use of the Bair Hugger during the subject surgery resulted in Plaintiff developing a periprosthetic joint infection (“PJI”), also known as a deep joint infection (“DJI”).

9. As a result of Plaintiff’s infection caused by the Bair Hugger during the subject surgery on May 13, 2014, Plaintiff underwent explantation of the left knee arthroplasty, debridement and stage one antibiotic spacer insertion on July 10, 2015. The surgeon noted in the record that there was fluid in the joint during the July 10, 2015, revision and debridement surgery. The final culture results came back positive from gram positive cocci (coagulase negative staph species). He was placed on a six-week regimen of antibiotics. Dr. Seagrave took the patient back to the operating room on October 20, 2015, for a left total knee arthroplasty revision and discharged on October 22, 2015. Bair Hugger warming device #3546 was utilized during the subject total left knee arthroplasty surgery on May 13, 2014.

ALLEGATIONS AS TO INJURIES

10. (a) Plaintiff claims damages as a result of (check all that are applicable):

<u> x </u> _____	INJURY TO HERSELF/HIMSELF
_____	INJURY TO THE PERSON REPRESENTED
_____	WRONGFUL DEATH
_____	SURVIVORSHIP ACTION
<u> x </u> _____	ECONOMIC LOSS

(b) Plaintiff’s spouse claims damages as a result of (check all that are applicable): *[Cross out if not applicable.]*

x LOSS OF SERVICES

 x LOSS OF CONSORTIUM

11. Defendants, by their actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

12. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

 x FIRST CAUSE OF ACTION - NEGLIGENCE;

 x SECOND CAUSE OF ACTION - STRICT LIABILITY;

 x FAILURE TO WARN

 x DEFECTIVE DESIGN AND
MANUFACTURE

 x FOURTH CAUSE OF ACTION- BREACH OF IMPLIED
WARRANTY OF MERCHANTABILITY LAW OF THE
STATE OF MISSOURI, R.S. Mo. §§400.2-314(2017) et. seq.;

 x FIFTH CAUSE OF ACTION- VIOLATION OF THE
MINNESOTA PREVENTION OF CONSUMER FRAUD
ACT;

 x SIXTH CAUSE OF ACTION – VIOLATION OF
THE MINNESOTA DECEPTIVE TRADE
PRACTICES ACT;

 x SEVENTH CAUSE OF ACTION- VIOLATION OF
THE MINNESOTA UNLAWFUL TRADE PRACTICES
ACT;

 x EIGHTH CAUSE OF ACTION- VIOLATION OF

THE MINNESOTA FALSE ADVERTISING ACT;

 X NINTH CAUSE OF ACTION- CONSUMER FRAUD
AND/OR UNFAIR AND DECEPTIVE TRADE
PRACTICES UNDER LAW OF THE STATE OF
MISSOURI,
R.S. Mo. §§407.020, et. seq.;

 X TENTH CAUSE OF ACTION –
NEGLIGENT MISREPRESENTATION;

 X ELEVENTH CAUSE OF ACTION- FRAUDULENT
MISREPRESENTATION;

 X TWELFTH CAUSE OF ACTION – FRAUDULENT
CONCEALMENT;

 X THIRTEENTH CAUSE OF ACTION –
LOSS OF CONSORTIUM; and

 X FOURTEENTH CAUSE OF ACTION –
UNJUST ENRICHMENT.

In addition to the above, Plaintiff(s) assert the following additional causes of
action under applicable state law:

Plaintiff reserves the right to amend his Complaint to include additional causes
of action under applicable state law.

**PRAYER FOR
RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:


1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement;
7. Restitution of remedy Defendants' unjust enrichment; and
8. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: August 25, 2022

Respectfully submitted,



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